

**JUDGE'S CORNER
NOTES FROM THE BENCH**

April 2013

1. MOTIONS TO LIFT STAY UNDER ALL CHAPTERS

Starting with the motions being reviewed for **hearings set after April 1, 2013**, any **unopposed** motions to lift stay containing requests for relief other than the lifting of the stay, the lifting of the co-debtor stay (if appropriate) and abandonment of the property (if properly noticed to the matrix) will be on the argument docket and will require appearance of counsel for the mover to explain why any other relief sought is appropriate. This other relief includes, but is not limited to, waiver of the 14-day waiting period provided in BR 4001(a)(3), that the stay relief continues and is binding upon conversion of the case, that the mover is authorized to amend its POC to state an unsecured deficiency and that the debtor/co-debtor may surrender the property to the mover voluntarily.

2. EX PARTE MOTIONS IN CHAPTER 13

More *ex parte* motions, including motions for payment of fees, are being filed without stating whether the trustee consents. All *ex parte* motions should recite whether the trustee consents, if the trustee is a party in interest. Motions to continue hearings on MRS's to which the trustee has not objected need not recite the trustee's consent.

3. LATE OBJECTIONS

When filing an objection fewer than 8 days before a hearing, the mover must obtain leave to file a late response before filing the objection. Late responses filed without prior leave will be stricken.

November 2012

1. MOTIONS TO CONTINUE

- a. Motions to continue should state how many times the same relief has been sought.

2. MOTIONS TO CONTINUE and MOTIONS FOR EXPEDITED HEARINGS

- a. The court's local rules require that motions to continue and to expedite recite whether parties in interest agree to the continuance or expedited hearing. This does not require consent of every creditor but does require consent of the principal parties in interest.

3. DEFICIENCY NOTICES

- a. The clerk's office has been issuing electronic deficiency notices when counsel do not file separate certificates of service to demonstrate that documents have been served as specified in the Code or Rules, including FRBP 9013 and 9014 and 7005.
- b. Beginning January 1, 2013, the clerk will no longer issue deficiency notices for failure to comply with Local Rule 9013-4 (certificates of service). If a document is filed and it does not have a separate certificate of service as required by Local Rule 9013-4 or fails to comply with any other portion of this Local Rule, the document will be stricken.
- c. After January 1, 2013, if you have not filed a certificate of service promptly after filing a document that must be served, the *document itself* – not the certificate - will be stricken without prior notice to you.

4. FILING FEES

- a. Also beginning January 1, 2013 a minimum of \$100 must be paid to the court upon the filing a case with an application to pay the remainder of the fee in installments.

5. OTHER IMPENDING CHANGES

- a. Beginning December 1, 2012, some changes to national rules, forms and fees take effect. You may review them at the US Courts website. Our website will have a link to the US Courts site.

June 2012

1. LATE OBJECTIONS TO MOTIONS

- a. Local Rule 9014-1 sets the deadline for filing objections or responses to motions of any kind; objection and responses are due no later than eight days before the scheduled hearing.
- b. The court will not consider untimely objections absent leave of court granted for cause *before they are filed*.
- c. Untimely responses– whether from the debtor or a creditor – will be stricken absent permission to file them from the court beforehand.

2. MOTIONS SEEKING ABANDONMENT

- a. Motions seeking abandonment must be served on *all parties on the mailing list* (formerly called the matrix).
- c. If the certificate of service does not reflect service to all parties on the mailing list, the motion for abandonment will be set for hearing and the court will deny abandonment unless counsel shows timely served notice of the hearing on the mailing list.
- d. If no one appears on behalf of the mover at the hearing, *all* relief the motion seeks will be denied.

3. NOTICING MODIFIED CHAPTER 13 PLANS AND OTHER FILINGS IN RESPONSE TO TRUSTEE'S MOTIONS

- a. The court occasionally continues hearings on plan confirmation and on matters including the standing chapter 13 trustee's motions to dismiss or convert in order to allow debtors to file modified plans or take other action, including filing claims objections.
- b. Debtors must file the appropriate motion, objection, amended plan or other document in time to be taken up and ruled on *at the continued hearing*. Failure to be prepared for a ruling at the continued hearing is cause for denial of the relief and conversion or dismissal of the case.

4. PROPOSED ORDERS AND JUDGMENTS

- a. The judge edits most proposed orders and judgments before they are entered in the court record.
 - i. Court staff requests to review the edits and incorporate them into future proposed orders and judgments are not optional.
 - ii. Any changes should be incorporated into future orders.
 - iii. Orders that continue to be submitted with the same drafting errors and omissions will be deleted.
 - iv. Lawyers should ask their staff to share any communications from the court in response to proposed orders.

5. INCORRECT SUBJECT LINE FORMATTING

- a. The court's Administrative Procedures guide, Section VII, details the correct procedure for submitting orders including subject line formatting. The guide is available on the court's website.
- b. Common errors continue:
 - i. date and case number reversed
 - ii. extra characters (e.g., "ch 13", "ch 7"; /2012 instead of /12)
 - iii. omitting leading zeros (6/6/12 instead of 06/06/12)
 - iv. orders on ex parte motions to continue submitted with hearing date instead of ex parte

6. MOTIONS NOT RECITING CONSENT OF OPPOSING COUNSEL

- a. Ex parte motions with consent of the affected parties may be acted on, subject to the following:
 - i. Motions to continue confirmation:
 - (a) The trustee must consent as well as any party opposing confirmation.
 - ii. Motions to withdraw motions for stay relief :
 - (a) All opponents must consent when the parties have joined issue.

(7) SECRETARIAL SUPERVISION

- a. Lawyers must supervise their staff.
- b. Please review the court's rules and administrative procedures with your staff to be sure they are working with the most up-to-date information.

April 2012

1. MOTIONS TO CONTINUE OR OTHER ACTION RELATED TO HEARINGS

- a. Local Rule 9014-3 sets a deadline for motions to continue scheduled hearings: No later than noon the day before the scheduled hearing, motions to continue must be filed and a proposed order submitted. Chambers will not learn of the filing of

a motion to continue if a proposed order is not sent to the orders in box by electronic mail. The proposed order must be received by noon.

- b. The local rule requires the motion to recite whether opponents consent.
- c. Please apply the noon deadline rule to all motions relating to anything scheduled or to be scheduled for the next day, such as motions to add matters to the docket (for example, motions to expedite hearings), or to remove things from the docket (such as consent orders or withdrawal of objections). Chambers staff try to finalize a hearing day's docket so it can be made available and sent out mid-afternoon the day before the hearing. Motions affecting the docket that are filed after 12:00 noon keep us from doing that and so won't ordinarily be considered.

2. PROPOSED ORDERS

- a. The court continues to have problems with proposed orders, including:
 - i. Incorrect subject lines on e-mails transmitting orders.
 - ii. Improperly worded or otherwise deficient orders.
- b. Responsibility for ensuring that orders are submitted properly lies with the lawyer, not secretaries or legal assistants. Lawyers should monitor their staff's e-mail and direct staff to share correspondence or communication from the court regarding orders.
- c. In the future, court staff will delete orders that don't comply with MDLA procedures.
- d. Call the court trainer, Chad Smith, or chambers for assistance submitting orders.

January 2012

1. CONSENT ORDER FEES AND COSTS

- a. Although this district has limited attorney fees and costs in consent orders/adequate protection orders to \$500.00, in light of recent filing fee increases the orders may now include fees and costs totaling \$526.00.
- d. Consent orders/adequate protection orders allowing fees and costs totaling more than \$526.00 must be noticed for hearing.

2. TAX REFUNDS IN CHAPTER 13 CASES

- a. Tax refunds belong to the bankruptcy estate and should not be used for any purpose without either the trustee's permission or a court order approving their use.
- b. Debtors should not apply for rapid refunds or refund anticipation loans.
- c. The court plans to order every chapter 13 debtor to turn over all federal and state tax refunds to the trustee promptly, failing which the case will be dismissed with the possibility of a bar to filing another chapter 13 petition for some period.
- d. Debtors should not assume that the court will confirm a modified plan to cure problems resulting from unauthorized use of a tax refund.

3. MORTGAGE ARREARAGES

- a. More cases are reaching confirmation with substantial mortgage arrearage claims. Large mortgage arrearages suggest at least two problems for debtors:
 - i. The claims may undermine feasibility of the plan.
 - ii. Large mortgage arrearages may support a finding that a debtor lacks good faith necessary to confirm the plan.
- b. If the mortgage arrearage claim exceeds 18 months (regardless of the amount of that debt, and whether other charges are added), debtors should consider carefully how they intend to prove at the confirmation that they are in good faith.
- c. Among things debtors must be prepared to address are:
 - i. disposition of funds that were not used to pay the mortgage (if those funds were available);
 - ii. specific facts about attempts to obtain mortgage relief;
 - iii. whether the debtor has made all mortgage payments timely since filing chapter 13; and
 - iv. changes in the debtor's circumstances since starting chapter 13 that demonstrate that the debtor will have the money to pay his mortgage debt on time for the term of the plan, and that he actually intends to pay the mortgage debt.

July 2011

1. PLAN OBJECTION DEADLINE

- a. Pursuant to Local Rule 3015-2(a), plan objections are due 15 days before confirmation. This is to give parties more time to resolve objections and file amended plans by the Friday pre-hearing deadline.
 - i. 8 days before the hearing is the deadline for objections to *motions*,
 - ii. 15 days before the hearing is the deadline for *plan objections*.
- b. These rules all are designed to allow you to prepare a confirmable plan to avoid the need for a confirmation hearing.
- c. Untimely objections will be stricken.

2. CONFIRMATION CONTINUANCES

- a. The court liberally grants continuances in order to confirm plans that are feasible. However, multiple continuances can delay confirmation for many months.
- b. Going forward, motions for continuances will not be routinely granted.
- c. In particular, a continuance will not be granted to do something for which a continuance has previously been granted, that has not been done by the continued hearing. This commonly includes the following:
 - i. Filing amended schedules.
 - ii. Filing amended or modified plans.
- d. Instead, the case will be converted or dismissed.
- e. When moving for a continuance, please be sure to ask for enough time to get your plan ready for confirmation.
- f. Additionally, all motions to continue should recite whether the mover previously has asked to continue the hearing.

3. RECONSIDERATION OF DISMISSALS

- a. A motion to reconsider any order typically must be based on facts that were not known to the mover (or its counsel), and not able to be discovered with due diligence before the court acted. That rule applies to motions to reconsider dismissal.

- b. The court has been granting motions to reconsider dismissals liberally, especially when the trustee does not oppose them; this is consistent with the goal of giving debtors a chance to try to stay in chapter 13, especially in light of the 2005 amendments to the Bankruptcy Code. However, at some point not making plan payments is a choice.
- c. Do not assume that once a case is dismissed, the debtor can catch up by making the payments not made before dismissal.

October 2009

1. DEFICIENCY NOTICES

Effective December 1, 2009, the clerk stopped sending out deficiency notices to members of the bar for failure to file:

- a. schedules
- b. statements of financial affairs
- c. means test
- d. payment advices
- e. chapter 13 plans
- f. electronic declarations
- g. financial management course certificates

The clerk sends deficiencies for certificates of service and numerous other problems including incorrect PDF's, incorrect event selection when filing in CM/ECF.

The clerk will continue to send to pro se debtors deficiency notices by United States mail.

April 2009

1. MOTIONS TO EXTEND OR CONTINUE THE AUTOMATIC STAY

- a. The court will not expedite a hearing on a motion to continue or extend the stay in a repeat filing when it is not possible to give adequate notice of the hearing to parties in interest.
- b. Specifically, the court will not set expedited hearings on those motions when they are filed later than noon the previous Friday.

- c. The mover must submit a proposed order setting an expedited hearing at the time the motion to expedite is filed.
- d. If the motion and proposed order are received too late in the day for the order to be signed, docketed, and issued to allow proper service, the court will not set an expedited hearing.

2. *EX PARTE* MOTIONS FOR STAY RELIEF

- a. Creditors should review local rule 4001-3 regarding ex parte motions for stay relief, especially the provisions dealing with relief after a breach of a consent order.
- b. Specific issues relating to ex parte motions include:
 - i. Real Party in Interest
 - (a) Loans are assigned, and companies change names.
 - (b) Especially if the creditor's name differs from the name in the consent order, ex parte motions must explain why the mover remains the real party in interest.
 - (c) If the mover differs from the party to the consent order, submit documents demonstrating that the mover is the real party in interest.
 - ii. Notarization
 - (a) Affidavits in support of the ex parte motions must reflect that the oaths were made in the presence of a notary public and must be properly executed.
 - iii. Relief sought
 - (a) Ex parte motions and proposed orders should only provide for relief permitted under the local rules.
 - (b) Orders providing for the turn over of collateral or other relief will not be signed, and the mover may be ordered to appear and explain the basis for the relief sought.

3. ORDER SUBMISSION

- a. Please submit orders **promptly** and **properly**, with the correct e-mail subject line and in the correct format. Detailed instructions for submitting orders are in the Administrative Procedures guide on the court's website.
- b. Missing orders can cause problems, for example, orders concerning claims objections.
 - i. The Trustee cannot pay claims if the debtor prevails on an objection but does not submit an order.
 - ii. The trustee may submit a request for appropriate relief if the mover does not submit an order on a matter that affects what she does.
- c. If orders are not received before a case is dismissed, they will not be signed. Obtaining any relief once a case has been closed will require a motion to reopen and in some cases, payment of filing fees.
- d. The clerk has been instructed not to keep cases open once they have been dismissed.